

REMARKS

Claims 9 to 18 are now pending and being considered.

It is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Claims 9 to 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Oswald et al., U.S. Patent No. 6,907,335 in view of Burdock et al., U.S. Patent No. 6,526,342.

In rejecting a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish prima facie obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 9 specifically provides that *a sensor arrangement determines the velocity of the vehicle* and that *the remote sensor is used to perform a plausibility check for the velocity of the vehicle*. In the context of the exemplary embodiment, a velocity is determined by a sensor arrangement 14, as provided for in claim 9 as presented. This determined velocity is then subjected to a plausibility check by another sensor – namely, the remote sensor.

In contrast, the “Oswald” reference refers to a pre-crash sensor system, in which a velocity of an obstacle is determined. Also, the Oswald reference does not disclose nor even suggest the feature of determining a plausibility check, as provided for in the context of the subject matter of claim 9.

Accordingly, the Oswald reference does not describe or even suggest the claim 9 feature in which *the remote sensor is used to perform a plausibility check for the velocity of the vehicle*.

The critical deficiencies of the Oswald reference are not cured -- and are not asserted to be cured -- by the secondary “Burdock” reference. The Office Action, at page 3,

conclusorily asserts that the Burdock reference teaches “a remote sensor for determining the velocity of a vehicle,” and that it would have been obvious to modify the vehicle of Oswald with the remote sensor of Burdock to “provide a signal varying as a function of the velocity signal”. It is then asserted that this corresponds to the claim 9 feature in which the remote sensor is used to perform a plausibility check for the velocity of the vehicle.

In fact, the text at col. 2, lines 31-36, of the Burdock reference plainly indicates that “The reference signal is determined, or learnt, by means of calculating a running average of the accelerometer signal over time” and that “the average includes a weighting factor... which varies with road speed”. That is, the accelerometer does not determine the velocity of the vehicle where the velocity is subjected to a plausibility test by another sensor.

The presently claimed subject matter provides the benefit that the sensors influencing the triggering of the restraining means include different velocity classes that may be used to modify the trigger thresholds (for example, a lowering of the trigger threshold as a function of the vehicle velocity), and an additional plausibility check by the remote sensor is provided to isolate cases that may lead to an undesired triggering of the restraining device.

Accordingly, the Burdock reference does not describe or even suggest the claim 9 feature in which *the remote sensor is used to perform a plausibility check for the velocity of the vehicle, as provided for in the context of the subject matter of claim 9*.

Therefore the cited reference(s) *do not* disclose or suggest all of the features of claim 9, so that it is allowable, as are its dependent claims 10 to 18.

It is therefore respectfully submitted that claims 9 to 18 are allowable.

Conclusion

It is therefore respectfully submitted that all of pending and considered claims 9 to 18 are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

Respectfully submitted,


Dated: 11/6/2007

By: 

Gerard A. Messina
Reg. No. 35,952

KENYON & KENYON LLP
One Broadway
New York, New York 10004
(212) 425-7200

CUSTOMER NO. 26646


ug ne.
33, 805
Haron C.
DEDITH